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JAN 28 2008
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	2 CA-CR 2007-0207
Appellant,	)	DEPARTMENT B
	)	
v.	)	MEMORANDUM DECISION
	)	Not for Publication
ROBERT D. CHANDLER,	)	Rule 111, Rules of
	)	the Supreme Court
Appellee.	)	
	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20054600

Honorable Stephen C. Villarreal, Judge

VACATED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines — Tucson
Attorneys for Appellant

Stephen Paul Barnard, P.C.
By Stephen Paul Barnard — Tucson

and

Joseph P. St. Louis — Tucson
Attorneys for Appellee

V Á S Q U E Z, Judge.

¶1 The state appeals from the trial court's dismissal of the charges against appellee Robert Dane Chandler, who was indicted on two counts of child abuse and one count of aggravated driving under the influence of an intoxicant. The court granted Chandler's motion to dismiss alleging the state had failed to timely disclose evidence. On appeal, the state argues the court exceeded its authority in dismissing the charges before expiration of the time allotted by Rules 16.1 and 35.1, Ariz. R. Crim. P., for the state to respond to Chandler's motion. For the reasons discussed below, we vacate the trial court's order dismissing the charges and remand for further proceedings consistent with this decision.

Standard of Review

¶2 We review a trial court's interpretation of criminal procedural rules de novo. *Nordstrom v. Leonardo*, 214 Ariz. 545, ¶ 9, 155 P.3d 1069, 1072 (App. 2007). "In interpreting [court rules], we apply the same principles used in construing statutes." *State ex rel. Romley v. Martin*, 205 Ariz. 279, ¶ 6, 69 P.3d 1000, 1002 (2003). "Words are to be given their usual and commonly understood meaning unless it is plain or clear that a different meaning was intended." *Kilpatrick v. Superior Court*, 105 Ariz. 413, 421, 466 P.2d 18, 26 (1970). Legal terms of art, unless defined within the rule, must be given the limited meaning commonly recognized by our courts. *In re Nelson*, 207 Ariz. 318, ¶ 17, 86 P.3d 374, 378 (2004).

Discussion

Jurisdiction

¶3 As a threshold issue, Chandler argues we lack jurisdiction over this appeal because the state's notice of appeal was untimely. The filing of a timely notice of appeal is essential to the exercise of our jurisdiction. *State v. Berry*, 133 Ariz. 264, 266, 650 P.2d 1246, 1248 (1982).

¶4 The trial court orally granted Chandler's motion to dismiss at a hearing on May 23, 2007. A signed minute entry bearing this date was filed by the clerk of the superior court on June 1, 2007. The state filed its notice of appeal on June 21, 2007. Chandler contends judgment was entered when the court ruled orally from the bench, rather than when the minute entry was filed by the clerk, thus the state's notice of appeal was filed outside the twenty-day period after the entry of judgment mandated by Rule 31.3, Ariz. R. Crim. P.

¶5 Although the Arizona Rules of Criminal Procedure do not specify what constitutes an "entry of judgment," this court, in interpreting the rules, has recognized that "'[r]endition' and 'entry' are separate and distinct acts, the former being an act of the court and the latter being an act of the clerk." *State v. Madrid*, 9 Ariz. App. 207, 209, 450 P.2d 719, 721 (1969). Judgment is rendered when pronounced in open court, but "[e]ntry of judgment is a ministerial act required to be done by the clerk of the court." *Id.; see In re Maricopa County Juv. Action No. JS-8441*, 174 Ariz. 341, 343, 849 P.2d 1371, 1373 (1992) (latest official date on minute entry for purpose of commencing appeal rights is date it was

entered by clerk); *State v. Rendel*, 18 Ariz. App. 201, 205, 501 P.2d 42, 46 (1972) (judgment from which appeal would lie is not final until entered in clerk's minutes). Thus, judgment was entered when filed by the clerk on June 1, the state's notice of appeal was timely, and we have jurisdiction over this appeal under A.R.S. § 13-4032(1).

Motion to dismiss

¶6 The state argues that, under Rules 16.1 and 35.1, the trial court exceeded its authority by granting the motion before the state's response was due. Rule 16.1(a) provides that when a pretrial motion is made, "[t]he opposing party shall have 10 days within which to file a response, unless the opposing party waives response." Rule 35.1 addresses the "form, content and rights of reply" of motions generally and states that, upon being served with a motion, "[e]ach party may within 10 days file and serve a response."

¶7 In *State ex rel. Berger v. Superior Court*, 112 Ariz. 451, 452, 543 P.2d 439, 440 (1975), the superior court granted a defendant's motion to dismiss an indictment at a hearing held at 9:00 a.m. on the final day of the period Rule 35.1 then allowed for filing a response to the motion. Our supreme court, noting that Rule 1.1, Ariz. R. Crim. P., states that "'(t)hese rules shall govern the procedure in all criminal proceedings in all courts within the State of Arizona . . . ,'" found the trial court had erred by ignoring the response period specified by Rule 35.1 and should have given the state until the end of that business day to respond. *Id.*

¶8 In the current case, Chandler filed a motion to dismiss on May 16, 2007, arguing the state had failed to timely disclose evidence. The trial court set a hearing on this motion for May 23, 2007. At the hearing, the state informed the court that its time to respond had not run and it was not yet prepared to file a response. The court noted that it would be on vacation all the following week and that the trial was set for the week after that. Without considering the merits of Chandler's motion, the court granted the motion based on the state's failure to respond and dismissed all charges against Chandler. Thus, the motion to dismiss was granted five days before the expiration of the ten-day response period mandated by Rule 35.1, as calculated under Rule 1.3(a).[1]

¶9 Chandler has provided no authority to support his assertion that "a judge's written order takes precedence" over the timetables set forth in the Arizona Rules of Criminal Procedure, and we have found none. We therefore conclude that the trial court exceeded its authority in granting Chandler's motion to dismiss before the state's time for response had run.

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[1]Rule 1.3(a) provides that, in computing a period of seven days or more, the day of the act from which the period begins to run is not included, while all other days are included, unless the last day is a Saturday, Sunday, or legal holiday, in which case the period runs until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday. In this case, May 16 was a Wednesday; therefore, the ten days began to run on Thursday, May 17, and, because May 26 was a Saturday, ran until the following Monday, May 28.

Disposition

¶10 We vacate the order granting Chandler's motion and dismissing the charges, and we remand the case to the trial court for further proceedings consistent with this decision.

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GARYE L. VÁSQUEZ, Judge

CONCURRING:

_____
PETER J. ECKERSTROM, Presiding Judge

_____
PHILIP G. ESPINOSA, Judge